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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: KRISTIAN LUND HENRIKSEN ET AL.
Filed: APRIL 4, 2007
For: PROBIOTIC TABLET FORMULATIONS
Serial No.: 10/584,113
Group Art Unit: 1651
Examiner: FORD, ALLISON M.
Atty Docket No.: BECK:001

Pursuant to 37 C.F.R. 1.8, I certify that this correspondence is being deposited with the U.S. Postal Service in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313 on the date below:

7/20/09
Date

Kurt G. Fischer
Name

Commissioner For Patents
P. O. Box 1450
Alexandria, VA 22313

Dear Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Applicant submits this paper in response to the office action dated June 22, 2009. In the office action, the examiner entered an election of species requirement as set forth in the office action.

In response, Applicant elects species (a), wherein the second zone comprises iron as the at least one active ingredient. This election is made with traverse.

Claims 1-10, 19-26, 32-48, and 50 are generic as to the elected species and thus readable thereon to elected species (a).

Applicant respectfully requests that all non-elected species be rejoined upon any indication of allowable subject matter.

The present election is made with traverse. Thus, Applicant respectfully requests reconsideration.

The reasons why the election of species requirement should be withdrawn are at least the following:

(1) The Examiner did not provide any reasoning or justification whatsoever for the election of species requirement. Instead the Examiner merely states "different 'additional active agents' are distinct." This is a conclusion, not reasoning.

(2) The claims were found to have unity of invention during the International PCT phase of prosecution.

(3) No unity of invention objection has been raised by any patent office where the application was nationalized except for the USPTO.

(4) The unified inventive concept in the claims is shown in claim 1. Specifically, the combination of (a) relatively high water content with (b) low water activity in the context of the claimed tablets, thus improving the viability of the live microorganisms in the tablets. Both (a) and (b) are measurable parameters.

In short, the Examiner failed to provide a reasoned election of species requirement, thus not meeting the PTO's evidentiary burden.

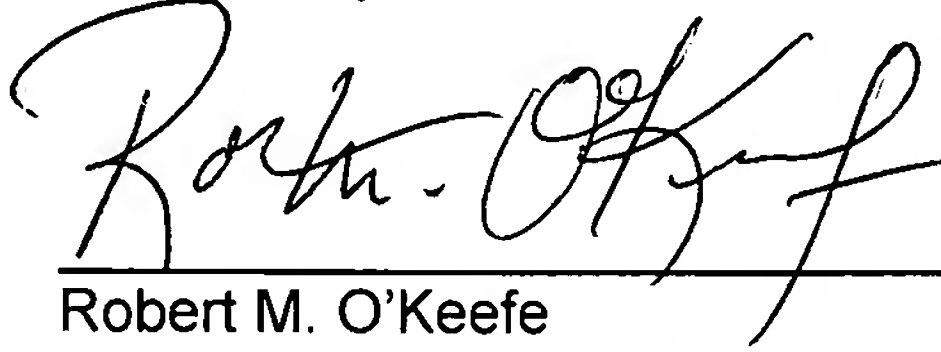
In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the election of species requirement.

Please note under no circumstances does Applicant assert or acquiesce to an allegation that species (a) – (t) are not patentably distinct.

Should any fees under 37 CFR 1.16-1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct such fees from O'Keefe, Egan & Peterman Deposit Account No. 10-1205/BECK:001. The examiner is invited to contact the

undersigned at the phone number indicated below with any questions or comments, or to otherwise facilitate expeditious and compact prosecution of the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. O'Keefe", written over a horizontal line.

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